

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ROBERT GONZALES,

Plaintiff,

v.

No. 12-cv-0466 MCA/SMV

**STATE OF NM PRISONS,
UNKNOWN C.O.,
UNKNOWN C.O. AT R.D.C.,
UNKNOWN LT. AT R.D.C.,
MEDICAL SERVICES AT R.D.C.,
ANY ADDITIONAL R.D.C. STAFF WHO WERE
INVOLVED IN INCIDENT,**

Defendants.

ORDER TO SHOW CAUSE

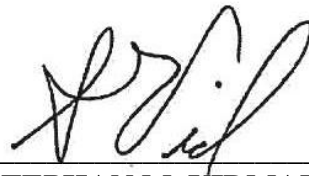
THIS MATTER is before the Court sua sponte under 28 U.S.C. § 1915(b)(1), on consideration of Plaintiff's responses to the Order [Doc. 3] entered on May 4, 2012. In the Order, the Court granted Plaintiff leave to proceed in forma pauperis and ordered an initial partial filing fee payment of \$25.00 as required by § 1915(b)(1). An attachment to Plaintiff's motion for leave to proceed in forma pauperis [Doc. 2] indicates sizable recent deposits and a balance in his inmate account during the months before he filed his complaint. According to the docket, Plaintiff has made two small payments that do not comply with the Court's earlier order. *See* [Docs. 6 & 8].

Plaintiff will be required to show cause why an initial payment should be excused. There is no constitutional violation in requiring an inmate to choose between prison purchases and litigation. *See Shabazz v. Parsons*, 127 F.3d 1246, 1248–49 (10th Cir. 1997). “[W]hen a prisoner has the means to pay an initial partial filing fee and instead spends his money on amenities at the

prison canteen or commissary, he should not be excused for failing to pay the initial partial filing fee.” *Baker v. Suthers*, 9 F. App’x 947, 949 (10th Cir. 2001) (unpublished) (affirming dismissal for failure to make initial partial payment or show cause for excusing the failure); cf. *Advantage Bus. Grp., L.L.C. v. Thomas E. Mestmaker & Assoc., Inc.*, 552 F.3d 1233, 1236 (10th Cir. 2009). “If a prisoner determines that his funds are better spent on other items rather than filing a civil rights suit, ‘he has demonstrated an implied evaluation of that suit’ that the courts should be entitled to honor.” *Roller v. Gunn*, 107 F.3d 227, 233 (4th Cir. 1997) (citation omitted). Failure to comply with this order may result in dismissal of Plaintiff’s complaint without further notice. The Court will not rule on Plaintiff’s Motion to Serve [Doc. 7] until this matter has been resolved.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that, within thirty (30) days from entry of this order, Plaintiff submit the previously ordered payment or show cause why the previously ordered payment should be excused.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read 'S. Vidmar', is written over a horizontal line.

STEPHAN M. VIDMAR
United States Magistrate Judge